



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1680 OF 2020
WITH
CIVIL APPLICATION NO.14662 OF 2023
WITH
CIVIL APPLICATION NO.8814 OF 2021
IN WP/1680/2020

1. Gokul S/o. Jaysing Shele,
Age : 65 years, Occu. : Agriculture,
R/o. Saptshrungi Colony,
Amalner, Taluka Amalner,
District Jalgaon.
2. Devidas S/o. Jaysing Shele,
Age : 60 years, Occu. : Agriculture,
R/o. Laxmi Nagar,
Near Shriram School, Mehrun,
Jalgaon, Taluka and
District Jalgaon.

... Petitioners

[Orig. Plaintiffs/Decree Holders]

Versus

1. Yuvraj S/o. Devram Pardhi,
Age : 37 years, Occu. : Agriculture,
R/o. Pendharpura, Parola,
Taluka Parola, District Jalgaon.
2. Sau. Nirmalabai Gopal Pardhi,
Age : 51 years, Occu. : Household,
R/o. Parase Road, Surat,
Taluka and District Surat
(Gujrat)
3. Sau Mangalabai Himmat Pardhi,
Age : 48 years, Occu. : Household,
R/o. Patil Gadi, Chopada,
Taluka Chopada, District Jalgaon.
4. Sunandabai Adhar Pardhi,
Age : 45 years, Occu. : Household,
R/o. Pendharpura, Parola,
Taluka Parola, District Jalgaon.

5. Sau Chotibai Sanju Pardhi,
Age : 35 years, Occu. : Household,
R/o. Morane, Taluka and District Jalgaon

... Respondents

[Orig. Defendants/Judgment debtors]

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Mr. Karan Sarosiya h/f. Mr. S. S. Bora, Advocate for petitioners.
Mr. Angad L. Kanade, Advocate for Respondent Nos.1 to 5.
Mr. Moinpasha Shaikh Farid, Advocate for Intervenor in CA/14662/2023.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 MARCH 2026

PRONOUNCED ON : 10 MARCH 2026

JUDGMENT :

1. By invoking Article 227 of the Constitution of India, petitioners are praying to quash and set aside the order dated 30.09.2019 passed by the learned Civil Judge, Senior Division, Amalner in Special Darkhast No.08 of 2011 below Exh.1 and Exh.104.

2. In short, petitioners case is that, they instituted Special Civil Suit No.04 of 2009 against present respondents for specific performance of the contract with regard to suit property, a agricultural land Block No.254/1 situated in the municipal limits of Parola i.e. on the strength of agreement of sale executed by defendants/respondents on 18.11.2005. That, suit came to be decreed in their favour, which was followed by Special Darkhast No.08 of 2011.

3. It is the further contention of the petitioners that, during pendency of Special Darkhast, they applied an application vide Exh.104 before the learned Civil Judge, praying for stay, contending that Writ Petition is pending before the Hon'ble High Court. The learned Civil Judge, Senior Division, Amalaner by common order dated 30.09.2019 passed below Exh.1 and Exh.104 rejected the application and also dismissed the Darkhast Application.

4. The petitioners contends that, in above Special Darkhast, application Exh.18 was pressed into service, praying for necessary permission and direction to Sub Registrar to register the sale deed, but the said application is also rejected on 08.02.2012.

5. It is further submitted that, petitioners are the successful decree holders. That, learned Court of Civil Judge, Senior Division, Amalaner ought to have allowed application Exh.1 and Exh.104, but it has failed to do so. That, issue of permission of authority was *sub judice* before the Hon'ble High Court. Therefore, prayers for stay were justified and ought to have been granted, but learned trial Court having failed, petitioners are constrained to approach this Court with present Writ Petition and consequently, prayers are raised for setting aside the order passed on Exh.1 and Exh.104 dated 30.09.2019 and to further direct restoration of Special Darkhast No. 08 of 2011.

6. In answer to above, learned counsel for respondents/ original defendants would point out that, no agreement of sale was executed as contended by the petitioners. It is pointed out that, primarily the land being belonging to tribal, before dealing with the same, prior permission of Revenue Authority i.e. the Collector was necessary. All such facts were suppressed from the Civil Court while obtaining Decree. That, learned Civil Court, Senior Division, Amalner noticed above lapses and rightly rejected the application. Consequently, it is prayed to dismiss the Writ Petition for want of merits.

7. After considering the above submissions, and on going through the impugned order dated 30.09.2019 on Exh.1 and Exh.104 in Special Darkhast No. 08 of 2011, it seems that, in the execution proceedings by petitioners, by virtue of decree of specific performance of contract in their favour passed in Special Civil Suit No.04 of 2009, tendered above referred application with prayers to stay the proceedings till the decision of the Hon'ble High Court on the application for restoration of appeal preferred before it.

8. After perusing the record, learned trial Court found that, in spite of granting sufficient time to the decree holder, no orders were obtained and further it was revealed that earlier application Exh.26 was pressed into service, but it was rejected. Second attempt

was also made vide Exh.29, but the same was also turned down. The learned trial Court on perusal of record noticed that, Revenue Authority i.e. the Collector has rejected the permission to decree holder to sell suit property. That, on 14.11.2018 directions were issued to the decree holder to take steps for seeking permission of the Collector for sale of suit property and for due execution of decree, however, no steps were taken by the decree holder. Therefore, on going through the record, on noticing failure of decree holder/petitioners to take effective steps to secure permission and in spite of sufficient opportunity, no stay was in favour of petitioners, learned Civil Court rejected both applications, Exh.1 and Exh.4, vide order dated 30.09.2019.

9. What is emerging from the above discussion is that, here though petitioners were equipped with decree in Special Civil Suit No.04 of 2009, during Darkhast proceedings, it had emerged that, Revenue Authority has not accorded permission for sale as land belonged to tribal.

10. Learned counsel for respondents has invited attention of this Court to sections 36 and 36A of MLR Code, which mandates permission from the Collector. The said provisions, for ready reference, are reproduce as under :

36. Occupancy to be transferable and heritable subject to certain restrictions.—

(1) An occupancy shall, subject to the provisions contained in section 72 and to any conditions lawfully annexed to the tenure, and save as otherwise provided by law, be deemed an heritable and transferable property.

(2) Notwithstanding anything contained in the foregoing sub-section occupancies of persons belonging to the Schedule Tribes (hereinafter referred to as the 'Tribals') (being occupancies wherever situated in the State), shall not be transferred except with the previous sanction of the Collector:

Provided that, nothing in this sub-section shall apply to transfer of occupancies made in favour of persons other than the Tribals (hereinafter referred to as the 'non-Tribals') on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974).]

(3) Where an occupant belonging to a Schedule Tribe in contravention of sub-section (2) transfers possession of his occupancy, the transferors or any person who if he survives the occupant without nearer heirs would inherit the holdings, may, "[within thirty years from the 6th July 2014], apply to the Collector to be placed in possession subject so far as the Collector may, in accordance with the rules made by the State Government in this behalf, determine to his acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, "[and, notwithstanding anything

contained in any law for the time being in force, the Collector shall] dispose of such application in accordance with procedure which may be prescribed :

Provided that, where a Tribal in contravention of sub-section (2) or any law for the time being in force has, at any time before the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974) transferred possession of his occupancy to a non-Tribal and such occupancy is in the possession of such non-Tribal or his successor-in-interest, and has not been put to any non-agricultural use before such commencement, then, the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on application by the Tribal (or his successor-in-interest) made at any time [within thirty years from the 6th July 2004], after making such inquiry as he thinks fit, declare the transfer of the occupancy to be invalid, and direct that the occupancy shall be taken from the possession of such non-Tribal or his successor-in-interest and restored to the Tribal or his successor-in-interest.

(* * * *)

[Provided further] that where transfer of occupancy of a Tribal has taken place before the commencement of the said Act in favour of a non-Tribal, who was rendered landless by reason of acquisition of his land for a public purpose, only half the land involved in the transfer shall be restored to the Tribal.]

(3A) Where any Tribal (or his successor-in-interest)

to whom the possession of the occupancy is directed to be restored under the first proviso to sub-section (3) expresses his unwillingness to accept the same, the Collector shall, after holding such inquiry as he thinks fit, by order in writing, declare that the occupancy together with the standing crops therein, if any, shall with effect from the date of the order, without further assurance, be deemed to have been acquired and vest in the State Government.

(3B) On the vesting of the occupancy under sub-section (3A), the non-Tribal shall, subject to the provisions of sub-section (3C), be entitled to receive from the State Government an amount equal to 48 times the assessment of the land plus the value of improvements, if any, made by the non-Tribal therein to be determined by the Collector in the prescribed manner.

Explanation. - In determining the value of any improvements under this sub-section, the Collector shall have regard to-

(i) the labour and capital provided or spent on improvements;

(ii) the present condition of the improvements;

(iii) the extent to which the improvements are likely to benefit the land during the period of ten years next following the year in which such determination is made;

(iv) such other factors as may be prescribed.

(3C) Where there are persons claiming encumbrances on the land, the Collector shall apportion the amount determined under sub-section (3B) amongst the non-Tribal and the person claiming such encumbrances, in the following manner, that is to say-

(i) if the total value of encumbrances on the land is less than the amount determined under sub-section (3B), the value of encumbrances shall be paid to the holder thereof in full;

(ii) if the total value of encumbrances on the land exceeds the amount determined under sub-section (3B), the amount shall be distributed amongst the holders of encumbrances in the order of priority:

Provided that, *nothing in this sub-section shall affect the right of holder of any encumbrance to proceed to enforce against the non-Tribal his right in any other manner or under any other law for the time being in force.*

(3D) The land vested in the State Government under sub-section (3A) shall, subject to any general or special orders of the State Government in that behalf, be granted by the Collector to any other Tribal residing in the village in which the land is situated or within five kilometres thereof and who is willing to accept the occupancy in accordance with the provisions of this Code and the rules and orders made thereunder and to undertake to cultivate the land personally, so, however, that the total land held by such Tribal, whether as owner

or tenant, does not exceed an economic holding within the meaning of sub-section (6) of section 36A.

(4) Notwithstanding anything contained in sub-section (1) or in any other provisions of this Code, or in any law for the time being in force it shall be lawful for an Occupant Class II to mortgage his property in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loan Act, 1883 (XIX of 1883), the Agriculturists Loans Act, 1884 (XII of 1884), or the Bombay Non-Agriculturists Loans Act, 1928 (Bom. III of 1928), or in favour of a co-operative society [or the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955), or a corresponding new bank within the meaning of clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or the Maharashtra State Financial Corporation established under the relevant law] in consideration of a loan advanced to him by such co-operative [society, State Bank of India, corresponding new bank, or as the case may be, Maharashtra State Financial Corporation], and without prejudice to any other remedy open to the State Government, [the co-operative society, the State Bank of India, the corresponding new bank, or as the case may be, the Maharashtra State Financial Corporation] in the event of such occupant making default in payment of such loan in accordance with terms on which such loan is granted, it shall be lawful for the State Government, 4"[the co-operative society, the State Bank of India, the corresponding new bank, or as the case may be, the Maharashtra State Financial Corporation] to cause the

occupancy to be attached and sold and the proceeds to be applied towards the payment of such loan.

The Collector may, 42[on the application of the co-operative society, the State Bank of India, the corresponding new Bank or the Maharashtra State Financial Corporation], and payment of the premium prescribed by the State Government in this behalf, by order in writing re-classify the occupant as Occupant-Class I; and on such re-classification, the occupant shall hold the occupancy of the land without any restriction on transfer under this Code.

Explanation. - For the purpose of this section, "Schedule Tribes" means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the state of Maharashtra under Article 342 of the Constitution of India 43 [and persons, who belong to the tribes or Tribal communities, or parts of, or groups within tribes or tribal communities, specified in part VIIA of the Schedule to the Order 44[made under] the said article 342, but who are not resident in the localities specified in that Order who nevertheless need the protection of this section and section 36A (and it is hereby declare that they do need such protection) shall, for the purposes of those section be treated in the same manner as members of the Scheduled Tribes.]

36A. Restrictions on transfer of occupancies by Tribals. -

(1) Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a Tribal shall,

after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974), be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction -

(a) in the case of a lease or mortgage for a period not exceeding 5 years, of the Collector; and

(b) in all other cases, of the Collector with the previous approval of the State Government:

Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five kilometres thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

Provided further , that in villages in Scheduled Areas of the State of Maharashtra, no such sanction allowing transfer of occupancy from tribal person to non-tribal person shall be accorded by the Collector unless the previous sanction of the Gram Sabha under the jurisdiction of which the tribal transferor resides has been obtained.]

Provided also that, in villages in Scheduled Areas of the State of Maharashtra, no sanction for purchase of land by mutual agreement, shall be necessary, if,-

(i) such land is required in respect of implementation of the vital Government projects; and

(ii) the amount of compensation to be paid for such purchase is arrived at in a fair and transparent manner.

Explanation. - For the purposes of the second proviso, the expression "vital Government project" means project undertaken by the Central or State Government relating to national or state highways, railways or other multi-modal transport projects, electricity transmission lines, Roads, Gas or Water Supply pipelines canals or of similar nature, in respect of which the State Government has, by notification in the Official Gazette, declared its intention or the intension of the Central Government, to undertake such project either on its own behalf or through any statutory authority, an agency owned and controlled by the Central Government or State Government, or a Government company incorporated under the provisions of the Companies Act, 2013 (18 of 2013) or any other law relating to companies for the time being in force.]

(2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.

(3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force; or any decree or order of any court or award or order of any tribunal, or authority, either suo motu or on application made by the tribal in that behalf, restore possession of the occupancy to the Tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974), it is noticed that any occupancy has been transferred in contravention of sub-section (1) 48 [the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on the application made by any person interested in such occupancy,] 49 [or on a resolution of the Gram Sabha in Scheduled Areas] [within thirty years form the 6th July 2004] hold an inquiry in the prescribed manner and decide the matter.

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to time direct.

(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the Tribal-transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal-transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such Tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding.

Explanation. - For the purpose of this section, the expression "economic holding" means 6.48 hectares (16 acres) of jirayat land, or 3.24 hectares (8 acres) of seasonally irrigated land, or paddy or rice land, or 1.62 hectares (4 acres) of perennially irrigated land, and where the land held by any person consists of two or more kinds of land, the economic holding shall be determined on the basis of one hectare of perennially irrigated land being equal to 2 hectares of seasonally irrigated land or paddy or rice land or 4 hectares of jirayat land."

11. To sum up, from the above provisions, it is abundantly clear that, as the land belonged to a tribal, obtaining prior permission from the Collector for transacting with the said land was imperative, but the same has not been obtained. Therefore, this court does not find any error on the part of learned Civil Court in passing the impugned order.

12. For above reasons, no case being made out to interfere by way of writ, petition fails and is dismissed in *limine*.

13. In view of dismissal of Writ Petition, Civil Application Nos. 14662 of 2023 and 8814 of 2021 do not survive and are accordingly disposed of.

(ABHAY S. WAGHWASE, J.)